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U.S. DISTRICT COURT E.D.N.Y.
★ APR 07 2011 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EDNA IGARTUA,
:
Plaintiff,
:
-against-
:
ELMHURST HOSPITAL D-11 PSYCHIATRIC
WARD,
:
Defendant.
:
-----X

BROOKLYN OFFICE

ORDER

09-CV-3287 (ENV) (ALC)

VITALIANO, D.J.

On July 7, 2009, pro se plaintiff Edna Igartua brought this action against defendant Elmhurst Hospital D-11 Psychiatric Ward in the United States District Court for the Southern District of New York. On July 13, 2009, the case was transferred to this Court. On October 13, 2009, after defendant requested a pre-motion conference in anticipation of filing a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court referred the defendant's request and any subsequent dispositive motion the defendant filed to Magistrate Judge Andrew L. Carter for a report and recommendation.

On May 27, 2010, defendant moved to dismiss the complaint for failure to state a claim. Following briefing by both parties and a review of the relevant submissions, Magistrate Judge Carter issued a Report and Recommendation ("R&R") on March 17, 2011. Liberally construing plaintiff's pro se complaint as asserting (i) a cause of action under 42 U.S.C. § 1983 for violations of plaintiff's constitutional rights, including her Eighth Amendment right against cruel and unusual punishment, and (ii) state law claims for negligence, medical malpractice, and intentional infliction of emotional distress, Magistrate Judge Carter recommended that plaintiff's federal claim be dismissed, with leave to replead, and that the Court decline to exercise supplemental

jurisdiction over plaintiff's state law claims.

On March 17th, a copy of the R&R was mailed to plaintiff at her last known address of record. This copy was returned as undeliverable on March 29, 2011. In any event, no objections to Judge Carter's R&R have been timely filed by either party.

In reviewing a report and recommendation, the court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). To accept a magistrate judge's report and recommendation where no timely objection has been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). However, in light of the probability that plaintiff remains unaware of the entry of the R&R or the filing deadline for objections, the Court has reviewed the R&R, as well as the underlying motion and complaint, de novo and accepts the recommended decision under that standard.

Specifically, after careful review of all the evidence in the record below, the Court finds Magistrate Judge Carter's R&R to be correct, comprehensive, well-reasoned, and free of any error of law or fact. The Court, therefore, adopts the R&R in its entirety as the opinion of the Court. As a result, to the extent the plaintiff's complaint alleges a claim pursuant to 42 U.S.C. § 1983, the complaint is dismissed for failure to state a claim, but with leave to replead. To the extent that plaintiff's complaint also alleges causes of action that sound in state law, the Court declines to exercise jurisdiction over these claims.

Conclusion

For all the foregoing reasons, defendant's motion to dismiss is granted, but with leave for plaintiff to replead within 30 days of the entry of this Order on the docket. The Clerk is directed

to mail a copy of this Order to plaintiff at her last known address of record. If defendant is aware of any other address where plaintiff may be contacted, defendant is directed to serve a copy of this Order on plaintiff at that address.

SO ORDERED.

Dated: Brooklyn, New York
April 6, 2011

~~s/ ENV~~

ERIC N. VITALIANO
U.S.D.J.